

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL, registered on 02/11/1997, and Registration No. 3,039,826 for the mark MISS NUDE WORLD, registered on 01/10/2006.

Filed: July 10, 2012

In Class 041

**For: "WILLIAM EADIE"**

**WILLIAM EADIE**

Petitioner

**V.**

**R&D PROMOTIONS, INC**

Registrant

July 10, 2012

\_\_\_\_\_  
COMMISSIONER OF TRADEMARKS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**PETITION TO CANCEL**

William Eadie, an individual, located at 1420 Sunningdale Lane, Ormond Beach, FL 32174 ("PETITIONER") by his attorney, Luke Lirot, Esquire, of LUKE CHARLES LIROT, P.A., hereby files this PETITION TO CANCEL R&D PROMOTIONS, INC., a Florida Corporation, located at 1473 Heather Way, Kissimmee, FL 34744, ("REGISTRANT") as the Owner of Record for U.S. Registration No. 2,037,202 for the



mark MISS NUDE INTERNATIONAL and for U.S. Registration No. 3,039,826, for the mark MISS NUDE WORLD.

PETITIONER believes that he will be damaged by the above-identified registrations and hereby petitions to cancel the same and seeks to correct the registrations of these marks to identify PETITIONER as the Owner thereof, as instructed by the Board's Order, pursuant to Trademark Act Section 18, 15 U.S.C. Section 1068, Federal Rules of Civil Procedure.

### **FACTS**

The grounds for cancellation are as follows:

1. REGISTRANT, a Florida corporation, was formed on 12/14/00 and lists Gracinda Cardoso, also known as "Rio Rivers", ("CARDOSO") as President,
2. On 01/22/04, REGISTRANT, a corporation, and CARDOSO, an individual, entered into a contract to borrow a sum of Twenty Thousand Dollars (\$20,000) from Brian Bell, an individual, having his principal place of business at 6961 1st Avenue North, Suite 400, St. Petersburg, FL 33701-3610 (hereinafter "BELL").
3. The loan was secured by the pledge of corporate assets of REGISTRANT and further secured by the personal guarantee of CARDOSO.
4. The mark MISS NUDE INTERNATIONAL, with the U.S. Registration No. 2,037,202 and the mark MISS NUDE WORLD, with the U.S. Registration No. 3,039,826 are assets of REGISTRANT.

5. REGISTRANT and CARDOSO defaulted under the terms of the loan.
6. On 04/01/05, *CASE UCN: 522004CA007512XXCICI In The Circuit Court For The Sixth Judicial Circuit In And For Pinellas County, Florida* "having examined the pleadings and affidavits in this case" ordered the *Final Judgment* in favor of Plaintiff, BELL, against Defendant REGISTRANT, a corporation, and Defendant CARDOSO, an individual, and awarded a judgment in the amount of Twenty Five Thousand Seven Hundred Ninety Dollars and Ninety-Six Cents (\$25,790.96).
7. BELL offered to sell and PETITIONER agreed to purchase the *Final Judgment*.
8. On 08/22/11, an *Assignment of Final Judgment Agreement* was executed between Assignor, BELL and Assignee, PETITIONER. BELL and PETITIONER executed the *Assignment of Final Judgment Agreement* in the presence of a State of Florida authorized Notary Public. This assignment made PETITIONER the legal owner of the *Final Judgment* dated 04/01/05.
9. As of 07/01/12, Judgment Debtors REGISTRANT and CARDOSO owe judgment Creditor PETITIONER a sum of Forty Two Thousand One Hundred and Thirty Nine Dollars and Forty Cents (\$42,139.40).
10. Judgment Debtors REGISTRANT and CARDOSO are located in the city of Kissimmee in Osceola County, Florida. On August 26, 2011, Judgment Creditor PETITIONER registered his interest by recording a *Certified Copy of the Final Judgment* (File #2011118634/Book 04169/Pages 1325-1326) and the original *Assignment of Final*

*Judgment Agreement* (File #2011118635/Book 04169/Pages 1327-1331) with the Clerk of the Court in Osceola County, Florida.

11. On September 1, 2011, Judgment Creditor PETITIONER filed a *Judgment Lien*, J11000564745, with the State of Florida, which authenticates REGISTRANT as the Judgment Debtor and PETITIONER as the Judgment Creditor.

12. On September 2, 2011, Judgment PETITIONER filed a *Judgment Lien*, J11000565239, with the State of Florida, which authenticates CARDOSO as the Judgment Debtor and PETITIONER as the Judgment Creditor.

13. On September 22, 2011, the records of the United States Patent and Trademark Office ("USPTO") identified Judgment Debtor REGISTRANT as the Owner of Record for U.S. Registration Number 2,037,202 for the mark MISS NUDE INTERNATIONAL.

14. On September 22, 2011, Judgment Creditor PETITIONER filed a Trademark Assignment for U.S. Registration Number 2,037,202 for the mark MISS NUDE INTERNATIONAL, as authorized by his valid and enforceable court order.

15. Judgment Creditor PETITIONER included with the Trademark Assignment filing:

A. Copy of the USPTO TESS document last updated on "Saturday, September 10 04:35:46 EDT 2011" which identifies Judgment Debtor REGISTRANT as the Owner of Record for U.S. Registration Number 2,037,202 for the mark, MISS NUDE INTERNATIONAL with the first renewal date of 04/16/07;

B. Copy of the *Final Judgment* ordered *In The Circuit Court For The Sixth Judicial Circuit In And For Pinellas County, Florida* dated April 1, 2005;

C. Copy of the *Assignment Of Final Judgment Agreement* dated 08/22/11;

D. Copy of the *Judgment Lien*, J11000564745, which authenticates REGISTRANT as the Judgment Debtor and PETITIONER as the Judgment Creditor; and

E. Copy of the *Judgment Lien*, J11000565239, which authenticates CARDOSO as the Judgment Debtor and PETITIONER as the Judgment Creditor.

16. On September 23, 2011 at 06:38 AM, Judgment Creditor PETITIONER received from the USPTO his *Notification of Recordation of Trademark Assignment*, titled "Assignment Notice of Recordation (WUID: 900202715)" which included the attachments "Notice" and "Cover Sheet".

17. On September 23, 2011, Judgment Creditor PETITIONER filed a Section 7 Request with the USPTO for the mark. MISS NUDE INTERNATIONAL

18. On September 23, 2011 at 12:23 PM, Judgment Creditor PETITIONER received from the USPTO confirmation of his Section 7 Request, titled "RDP-CDZ6 Registration number 2037202: Received Your Section 7 Request".

19. On September 23, 2011, the records of the USPTO identified Judgment Debtor REGISTRANT as the Owner of Record for U.S. Registration Number 3,039,826 for the mark MISS NUDE WORLD.

20. On September 23, 2011, Judgment Creditor PETITIONER filed a Trademark

Assignment for U.S. Registration Number 3,039,826 for the mark MISS NUDE WORLD as authorized by his valid and enforceable court order.

21. Judgment Creditor PETITIONER included with the Trademark Assignment filing:

A. Copy of the USPTO TESS document last updated on "Friday, September 23 04:35:46 EDT 2011" which identifies Judgment Debtor REGISTRANT as the Owner of Record for U.S. Registration Number 3,039,826 for the mark MISS NUDE WORLD;

B. Copy of the *Final Judgment* ordered *In The Circuit Court For The Sixth Judicial Circuit In And For Pinellas County, Florida* dated April 1, 2005;

C. Copy of the *Assignment of Final Judgment Agreement* dated August 22, 2011;

D. Copy of the *Judgment Lien*, J11000564745, which authenticates REGISTRANT as the Judgment Debtor and PETITIONER as the Judgment Creditor; and

E. Copy of the Judgment Lien, J11000565239 which authenticates CARDOSO as the Judgment Debtor and PETITIONER as the Judgment Creditor.

22. On September 23, 2011 at 4:17 PM, Judgment Creditor PETITIONER received from the USPTO confirmation of his Trademark Assignment filing, titled "Assignment confirmation Receipt ID:TM214468" which included the attachment "EASTM214468."

23. On September 27, 2011, at 06:25 AM, Judgment Creditor PETITIONER received from the USPTO his *Notification of Recordation of Trademark Assignment*, titled "Assignment Notice of Recordation (WUID: 900202903)" which included the attachments "Notice" and "Cover Sheet".

24. On September 27, 2011, Judgment Creditor PETITIONER filed a Section 7 Request with the USPTO for the U.S. Registration Number 3,039,826 for the mark MISS NUDE WORLD.

25. On September 27, 2011 at 11:37 AM, Judgment Creditor PETITIONER received from the USPTO confirmation of his Section 7 Request, titled "RDP-CDZ6 Registration number 3039826: Received Your Section 7 Request".

### SUMMARY

Section 18 of the Trademark Act, as amended by the Trademark Law Revision Act of 1988, provides, in pertinent part, as follows:

*"In such [inter parties] proceedings the Commissioner may refuse to register the opposed mark, may cancel the registration, in whole or in part, may modify the application or registration by limiting the goods or services specified therein, may otherwise restrict or rectify with respect to the register the registration of a registered mark, may refuse to register the registration of a registered mark, may refuse to register any or all of several interfering marks, or may register the mark or marks for the person or persons entitled thereto, as the rights of the parties hereunder may be established in proceedings...."*

The language setting forth the Commissioner's authority, exercised by the Trademark Trial and Appeal Board, to "rectify with respect to the register" was added to Section 18 to allow the Board "to determine trademark ownership rights where they are at variance with the register..." and "to obviate the need to initiate a formal court proceeding in a matter that could be readily resolved by the Board." S.Rep. No. 515, 100th Cong., 2d Sess. 35. The impetus for this new provision of Section 18 was the United States Trademark Association's Trademark Review Commission Report and Recommendations, which recommended the language eventually incorporated in amended Section 18 and

which explained the need for the amendment.

We also believe the Board should have statutory authority to determine trademark ownership rights where they are at variance with the register. For example, in an inter parties case the Board should be able to find that a cancellation petitioner is the true owner of the registration, such as by imposition of a constructive trust, and to correct the register accordingly. At present it is necessary for the petitioner to file a court action to obtain this relief. While the amendment speaks of rectifying the "register" to change the ownership of "registrations," we believe the Section is broad enough to authorize the Board to take similar action with respect to an application to register (as in this case), particularly in light of the language of Section 18 authorizing the Board to "register the mark ... for the person or persons entitled thereto, as the rights of the parties ... may be established in the proceedings...." 17 U.S.P.Q.2d 1414 (Trademark Tr. & App. Bd.), 1990 WL 354574 (Trademark Tr. & App. Bd.)

Payment in the amount of Three Hundred Dollars (\$300.00) for the filing fee for this Petition to Cancel is included with this transmittal.

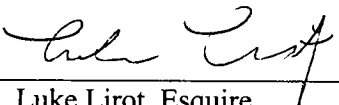
#### **RELIEF REQUESTED**

WHEREFORE, APPLICANT respectfully requests that the Board cancel R&D PROMOTIONS, INC., as the Owner of Record for U.S. Registration No. 2,037,202 for the mark MISS NUDE INTERNATIONAL and cancel R&D PROMOTIONS, INC. as Owner of Record for U.S. Registration No. 3,039,826, for the



mark MISS NUDE WORLD, and identify WILLIAM EADIE as owner of Record of both specified U.S. Registrations.

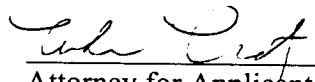
Respectfully Submitted:

By:   
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Luke Lirot, Esquire  
Florida Bar Number 714836  
LUKE CHARLES LIROT, P.A.  
2240 Belleair Road, Suite 190  
Clearwater, Florida 33764  
Telephone: (727) 536-2100  
Facsimile: (727) 536-2110  
*Attorneys for the Applicant*

Dated: July 10, 2012

**CERTIFICATE OF SERVICE**

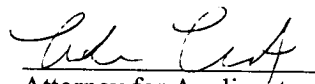
I hereby certify that a true and complete copy of the foregoing PETITION TO CANCEL has been served on Thomas T. Aquilla, Esq., domestic representative of R&D Promotions, Inc. by mailing said copy on July 10, 2012, via First Class Mail, postage prepaid to:

  
\_\_\_\_\_  
Attorney for Applicant  
Signed July 10, 2012

Thomas T. Aquilla, Esq.  
221 Coe Hill Road  
Center Harbor, New Hampshire, 03226

***Designation of Domestic Representative***

Attorney Luke Lirot, Esq., whose postal address is 2240 Belleair Rd., Suite 190, Clearwater, FL 33764, is hereby, designated WILLIAM EADIE'S representative upon whom notice or process in this proceeding may be served.

  
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Attorney for Applicant  
Signed July 10, 2012